

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000273

01/14/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

THOMAS YOUNG

PHILIP A SEFLOW

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #CR200101734

Charge: ASSAULT

DOB: 04/15/62

DOC: 01/18/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124 (A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Scottsdale City Court, exhibits made of record and the memoranda submitted.

In the case at hand, following an alleged fracas between Appellant and the victim, Appellant was arrested for assault, in violation of A.R.S. §13-1203(A)(2). Appellant held a pillow over the victim's face, then put his knees on top of the pillow, which knocked her tooth

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loose. Appellant claims that they were engaged in “aggressive sex,” and that the victim fell out of bed and hit her mouth on a dresser.

During the trial, the prosecution played the tape of the 911 call the victim made after the incident. Interestingly, the court would not permit the defense to play the 911 tape, already admitted into evidence, and ask the victim questions concerning alleged discrepancies in her testimony. Appellant was found guilty of assault and now brings these matters before this court.

The first issue is whether lower court denied Appellant’s Sixth amendment and Arizona Constitutional right to confront and cross-examine witnesses who testify against him. Both the Arizona and the U.S. Constitutions guarantee criminal defendants the right to confront accusers and witnesses at trial.¹ The confrontation clauses of the U.S. and Arizona Constitutions guarantee that “the defense will be given full and fair opportunity to probe and expose...through cross-examination, thereby calling to the attention of the factfinder, the reasons for giving scant weight to the witness’ testimony.”² Face-to-face cross-examination serves three main purposes recognized by Arizona and U.S. courts:

(1) it ensures the reliability of the evidence, by allowing the trier of fact to observe the demeanor, nervousness, expressions, and other body language of the witness; (2) it impresses upon the witness the seriousness of the matter and ensures that statements are given under oath; and (3) it helps assure the identity of the witness, that the witness is not being coached or influenced during testimony, and that the witness is not improperly referring to documents.³

The record reveals no legal justification for precluding cross-examination of the victim. Though the Appellee contends that limitation of cross-examination was necessary to avoid harassment of the victim, it does not appear from the record that questioning about the 911 tape was harassment. Such questions were clearly relevant and material to the credibility of the victim as Appellant alleged discrepancies between the statements of the victim. I must conclude that the lower court erred by denying Appellant the right to play the 911 tape and question the victim about alleged inconsistent statements she made, thus curtailing and denying Appellant’s right to cross-examine the victim.

¹ Ariz. Const. Art. 2 §24; U.S. Const. Amend. VI; See *State v. Pereda*, 111 Ariz. 344, 529 P.2d 695 (Ariz. 1974).

² *State v. Anaya*, 165 Ariz. 535, 541, 799 P.2d 876, 882 (Ariz.App. 1990); *State v. Romanosky*, 162 Ariz. 217, 226, 782 P.2d 693, 702 (1989); *Delaware v. Fensterer*, 474 U.S. 15, 21-22, 106 S.Ct. 292, 295-96, 88 L.Ed.2d 15 (1985).

³ *State v. Moore*, --- Ariz. ---, 56 P.3d 1099, 1101, 386 Ariz. Adv. Rep. 4 (Ariz.App. Nov 12, 2002), *citing* *U.S. v. Hamilton*, 107 F.3d 499, 503, 7th Cir.(Wis.) (1997).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000273

01/14/2003

The final issue is whether the court erred by denying the request for a jury trial. The law is unambiguous concerning this matter: neither the U.S. nor the Arizona Constitution guarantees a defendant the right to a jury trial when the charge amounts to a petty offense.⁴ No Arizona cases grant the right to a jury trial to persons accused of assault. Hence, a jury trial would not have been appropriate in this case. The trial court did not err in denying the request for a jury trial.

IT IS THEREFORE ORDERED reversing the conviction and sentence from the Scottsdale City Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for a new trial, and all further and future proceedings.

⁴ State v. Harrison, 164 Ariz. 316, 792 P.2d 779 (Ariz.App. 1990); Duncan v. Louisiana, 391 U.S. 145, 159 (1968).